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County Finds Developers Waive Low-Income Housing

By Matthew Mosk

Montgomery County law is allowing developers to buy their way out of requirements to build affordable housing, despite wide agreement that the county faces a serious shortage of moderately priced units, officials said yesterday.

Projects of 35 or more homes or apartments are required to have 12.5 percent of the units set aside for low- or middle-income buyers. But a report released yesterday by the County Council staff said nearly half of the 400 affordable units developers committed to build in 2002 were waived in favor of a contribution to the county's housing initiative fund.

The buyouts were legal, council members said, but the fees paid by builders followed no consistent policy. One developer paid \$13,948 per unit to escape affordable housing requirements; another paid \$100,000 per unit.

Moreover, it appears that the goal of the buyout option -- to raise money for construction of affordable units -- has not been achieved. There is scant evidence, housing experts said, that the \$1.2 million in payments collected since the provision took effect in 1989 have translated into a significant number of new, moderately priced residences.

Although the number of buyouts has risen in the past several years, the number of affordable housing units put on the market has continued to plummet, from a high of 1,224 in 1984 to 208 last year.

"We think [the buyouts] have begun to subvert the purpose of the [affordable housing] law," said Ralph Bennett, chair of the Housing Opportunities Commission of Montgomery County.

Council members Tom Perez (D-Silver Spring) and Phil Andrews (D-Gaithersburg) said yesterday they will introduce legislation July 29 to eliminate the provision.

"When the cure becomes worse than the disease, it's time to look for a new cure," Perez said. "It's time to scrap this and look for a new way."

County housing officials defended the buyouts offered to date, saying in written testimony to the council that the recent deals were concentrated in high-rise apartment buildings. In some cases, a buyout was preferable, they said, because high maintenance fees in the new apartment towers were making the low-rent units too costly for moderate-income families.

In other cases, developers argued that adhering to the 12.5 percent requirement jeopardized the financing of their projects.

Sometimes "the losses are so great that the entire project is not feasible," wrote Elizabeth B. Davison, director of the Department of Housing and Community Affairs, which oversees the buyout program.

A majority of the buyouts have been occurring in affluent parts of the county, Perez said, defeating one important goal of the county's Moderate Priced Dwelling Unit program.

"One purpose of this law is to foster the economic integration of Montgomery County," Perez said. "But with these buyouts, a certain part of the county is being given a pass."

According to a July 16 memorandum from Housing Opportunities Commission Executive Director D. Scott Minton to council member Steven A. Silverman (D-At Large), only 109 of the 304 affordable units required last year in the Chevy Chase, Bethesda and Rockville corridor will actually be built.

"The remainder were bought out for about \$21,000 each, far lower than what it costs to actually produce a home for a moderate-income family," Minton wrote.

This is despite a requirement in county law that buyouts produce "significantly more" affordable units than were originally mandated.

Minton concludes that the buyouts are being "over-utilized" at a time when the county "continues to be in an affordable housing crisis."

Not everyone agrees, however, that the buyout option should be scrapped.

Joseph P. Blocher, a senior partner with the law firm of Linowes & Blocher, said it serves an important purpose in cases in which affordable housing requirements would scuttle an entire project or be rendered useless by high maintenance fees.

"I think the buyout program has a lot of benefits," Blocher said. "I wouldn't do away with it."

Silverman said that he believes the council will eliminate the buyout allowance but that he hopes the council will also make sure there is some way developers can thrive within the rules. One possibility, he said, would be to lift some of the restrictions facing builders so they can increase the density of their projects and make it more cost effective to include low-priced units.

The county's affordable-housing law says developers should "have reasonable prospects of realizing a profit" on projects that include reduced-rate units, he said.

"I do think there's going to be support for eliminating the buyout program," Silverman said. "But the end result cannot be to drive the developers away entirely. Not if you want affordable housing built in the county, since they're the ones building it."